



Midwest Environmental Advocates, Inc. Freedom of Information Act Records Request and Fee Waiver

Records Request Description:

In accordance with 5 U.S.C. § 552, Midwest Environmental Advocates ("MEA") requests a copy of all records related to violations, subsequent monitoring activities and informal actions at the following Wisconsin sites:

Clean Air Act Violations

1. Didion Milling – Cambria

Resource Conservation and Recovery Act Violations

1. Bemis Wisconsin LLC – New London
2. Mid-America Steel Drum Co

Please include in your response all records occurring from Jan. 1, 2018, through the date the request is fulfilled.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the government bears the burden of substantiating why information may not be released under FOIA's limited exemptions. Pursuant to the holding of *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973), please include a detailed ledger including:

1. Basic factual material about each withheld communication, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific statutory exemption(s) under which the communication (or portion thereof) was withheld, a full explanation of how each exemption applies to the withheld communication, and any interest(s) that would be harmed by release. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If your position is that a document contains exempt segments that are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. See *Mead*

Data Cent. v. Dep't of Air Force, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request:

The subject of this request concerns EPA information and records on Wisconsin facilities that are currently in noncompliance with RCRA and CAA regulations. Relying on MEA staff's legal, policy, and technical expertise, MEA will distill the contents of the records and provide relevant information to the public, in accordance with MEA's mission. MEA works for healthy land, air, water, and government. Notably, a healthy environment and government is premised on open and complete access to public records. To this end, MEA maintains an open dialog with members of the public through social media, publications, and outreach events. Moreover, MEA provides technical resources, input and comment opportunities, and environmental news through our website, newsletter, blog, and e-mail alerts. MEA catalogs all public records requests on its website to ensure complete transparency and information. In all of its outreach, MEA provides pertinent information and resources or redirects interested members of the public to partners who can provide more insight. In sum, MEA is best situated to collect, distill, and communicate this information.

The requested records will inform the public's understanding of industry pollution as it affects the quality of Wisconsin water, air, and land. Given the ongoing violations, the records will further shed light on current federal enforcement of the identified permitted facilities and thus, increase understanding of the gap between RCRA and CAA regulation violations and pollution occurring in communities around the state. The public has a strong interest in maintaining or improving the environment, and this information could inform future cleanups, change facility practices, or generally raise awareness in the deterioration of valuable resources in Wisconsin. As such, the information is clearly significant and meaningful to the public.

Factor One – The subject of the request concerns identifiable operations and activities of the federal government:

The subject of this request concerns EPA records on Wisconsin facilities that are currently in noncompliance with federal regulations. EPA is statutorily authorized to implement the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), the Resource Conservation and Recovery Act ("RCRA"), and the Safe Drinking Water Act ("SDWA"). This authority often requires EPA to communicate and consult with state and local agencies in overseeing the local compliance and implementation of the CWA, CAA, RCRA, SDWA, and EPA regulations. The requested records thus directly concern "the operations or activities of the government." 40 C.F.R. § 2.107(l)(2)(i).

Factor Two – The disclosure is “likely to contribute” to an understanding of government operations or activities:

There is particular interest in understanding how governmental agencies are enforcing environmental regulations and maintaining an emphasis on clean air, water, land, and government. As a non-profit environmental law center, MEA prioritizes educating and empowering members of the public, and works to defend public rights, protect natural resources, and ensure transparency and accountability in government. See <https://midwestadvocates.org/about/our-work>. MEA works for a clean, open, and honest government, and clean and open government depends on public access to government records. See <https://midwestadvocates.org/issues-actions/issues/detail/government>. These records will increase public understanding of regulatory noncompliance and how the federal government is responding to noncompliance. Furthermore, the records will serve to highlight any obvious gaps between significant violations and enforcement actions.

Factor Three - The contribution to an understanding of the subject by the public is likely to result from disclosure:

The disclosure of the requested records will contribute to the understanding of Wisconsin communities interested in a healthy environment and open government. Importantly, MEA has the intent, expertise, and means to distill and disseminate the requested information to the public. Measuring the contribution to public understanding turns on “the degree to which ‘understanding’ of government activities will be advanced by seeing the information; and the extent of the ‘public’ that the information is likely to reach.” *Cause of Action v. FTC*, 799 F.3d 1108, 1116 (D.C. Cir. 2015). “FOIA does not require [however] that a requester be able to reach a ‘wide audience,’” just a “reasonably broad audience of persons interested in the subject.” *Id*; see *Prison Legal News v. Lappin*, 436 F.Supp.2d 17, 26–27 (D.D.C. 2006).

MEA is an organization that has considerable legal, policy, and technical expertise working to protect natural resources over its 20-year history. Along with several partner organizations, community groups, and members of the public, MEA identified facility RCRA and CAA site violations as an area of concern, and MEA is committed to leveraging its expertise to strengthen environmental controls and advance enforcement of existing law governing the protection of public health.

Further, MEA has broad experience in RCRA and CAA site violations, and will distill the contents of the records and provide that information to the public. MEA maintains a list of activists, concerned members of the public, donors, and members who are themselves interested in learning more about records concerning facility RCRA and CAA site violations. Annually, MEA hosts around 12 public outreach events with an average attendance of 50 people per event, highlighting key issues in which it is involved. MEA has 1675 subscribers to its e-newsletter, over 2000 Twitter followers, nearly 6000 Facebook followers, and a website with a regularly

updated blog. See, e.g., <https://midwestadvocates.org/issues-actions/actions/livestock-facility-siting-law>.

As part of MEA's mission to uphold clean and open government, the information received from the requested records will be provided to interested individuals, partner organizations, and the general public through press releases, public presentations, media engagement, and less formal social media outreach. MEA will analyze and distill the information when necessary to make it more accessible to the public.

MEA has a demonstrated history of making information obtained from requested records available to the public. In 2018, MEA requested all records between the City of Milwaukee, WI and/or Milwaukee Water Works and the Environmental Protection Agency EPA regarding lead services lines or lead levels in drinking water. The previous year, MEA requested all records, including communications between USACE, Meteor Timber, LLC., and the U.S. Fish & Wildlife Service. All records obtained from these records requests are available to the public through the Google search function on our website. See <http://midwestadvocates.org/opengovernment>. In sum, MEA has historically served as a central resource for members of the public to learn about key environmental issues arising out of records requests.

Factor Four - The significance of the contribution to public understanding:

The requested records shed light on a matter of considerable public interest and concern: clean water, air, land, and government. By making these records accessible to interested members of the public, MEA furthers the public's understanding of the operations of the federal government which is the primary goal of the FOIA. *Monroe-Bey v. F.B.I.*, 890 F. Supp. 2d 92, 97 (D.D.C. 2012).

Recently, clean water issues have been at the forefront of public concern. In 2019, a survey of voters from southwest Wisconsin found that 89% rated "water quality" as an important issue deserving of government attention. See, e.g., http://elpc.org/wp-content/uploads/2019/12/ELPC_SW-Wisconsin-Water-Poll-Report.pdf. Likewise, Governor Tony Evers' declaration of 2019 as "The Year of Clean Drinking Water" and the 2019 Speaker's Task Force on Water Quality underscore the rising public concern over water quality. During that time, MEA conducted outreach campaigns using Facebook, monthly e-newsletters, and email alerts in an effort to encourage public engagement and discourse.

Similarly, Wisconsin communities have expressed growing concern with air quality and the subsequent public health impacts associated with industry violation of state and federal regulations. In response to public concern regarding the air quality threat posed by CAFOs, MEA created a comprehensive toolkit, outlining the industry's impact on air quality and the air permit process. See https://midwestadvocates.org/assets/resources/MEA_CAFO_Toolkit.pdf. Further, as specific environmental issues arise and the public seeks information, MEA has

created a library of similar public guides and resources. See, e.g., <https://midwestadvocates.org/assets/resources/Tribal-Rights-Resources-Pipeline-Guide-FINAL-6.25.20.pdf>, <https://midwestadvocates.org/assets/resources/EIS-Guide.pdf> and <https://midwestadvocates.org/assets/resources/Jan. 2018 NM Regulation of Wisconsin Farms.pdf>.

The outlined public concern with clean water and air demonstrates a need and demand for additional information and resources. MEA aims to further the public's understanding of the federal management and protection of Wisconsin natural resources by making the requested records accessible to the public. The requested records will identify Wisconsin facilities that are currently in noncompliance with the CAA or RCRA, why they are not in compliance, and what is being done. Therefore, the records sought will contribute significantly to the public's understanding of enforcement records regarding these federal regulations, in turn, furthering citizen understanding of the quality of Wisconsin water, air, land, and government.

Factor Five - The existence and magnitude of a commercial interest:

As a non-profit, non-partisan organization, MEA clearly has no commercial interest in the records requested herein. Even so, recent federal court decisions have indicated that having a commercial interest does not preclude a fee waiver. Notably, the D.C. Circuit Court in 2015 stated, "since the 1986 amendments, it no longer matters whether the information will also (or even primarily) benefit the requester. Nor does it matter whether the requester made the request for the purpose of benefitting itself. The statutory criterion focuses only on the likely effect of the information disclosure." *Cause of Action*, 799 F.3d at 1118.

MEA has a public interest mission to ensure clean water, air, land, and government for this generation and the next. The ultimate effect of disclosing the requested records and data to MEA will be to better inform interested members of the public about facility RCRA and CAA regulation violations, pollution, and potential enforcement actions.

Factor Six - The primary interest in disclosure:

MEA has a primary interest in collecting and distilling the records as an informational resource to the public, which MEA will accomplish through numerous channels. For example, MEA maintains a page on its website to post responses to record requests such as this FOIA request to the EPA. See <https://midwestadvocates.org/opengovernment>. MEA also regularly posts on Facebook, blog, and send out email alerts to inform the public about opportunities for public comment. Finally, MEA fields intakes and informational requests from members of the public and interested media members. Throughout all of these forms of disclosure, MEA seeks to provide unbiased summaries of pertinent environmental data and issues.